

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

JOSHUA RYAN FULLER,

Plaintiff,

Case No. 3:22-cv-101

vs.

WARDEN, FCI BECKLEY,

Defendant.

District Judge Michael J. Newman
Magistrate Judge Kimberly A. Jolson

ORDER: (1) ADOPTING THE REPORT AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE (Doc. No. 5); (2) DISMISSING PETITIONER'S HABEAS PETITION WITHOUT PREJUDICE; (3) DENYING PLAINTIFF A CERTIFICATE OF APPEALABILITY; (4) CERTIFYING THAT ANY APPEAL WOULD BE OBJECTIVELY FRIVOLOUS AND FINDING THAT *IN FORMA PAUPERIS* STATUS SHOULD BE DENIED ON APPEAL; AND (5) TERMINATING THIS CASE ON THE DOCKET

This case is before the Court on the Report and Recommendation issued by United States Magistrate Judge Kimberly A. Jolson (Doc. No. 5), to whom this case was referred pursuant to 28 U.S.C. § 636(b). Judge Jolson initially entered a Deficiency Order against Petitioner, a federal prisoner challenging his sentence, noting that he neither paid the required \$5.00 filing fee nor submitted a motion for leave to proceed *in forma pauperis*. Doc. No. 4 at PageID 12. Additionally, she ordered him to either pay this fee or submit a motion for leave to proceed *in forma pauperis*, and to file an amended petition or otherwise respond to her order within fourteen days. *Id.* at PageID 12–13.

More than thirty days have passed since that order, without any action by Plaintiff. Now, Judge Jolson has recommended that Plaintiff's habeas petition be dismissed under Fed. R. Civ. P.

41(b) and Rule 12 of the Rules Governing Section 2254 Cases in the United States District Courts for non-prosecution. *See* Doc. No. 5. No party objected to the Report and Recommendation.

Upon careful *de novo* consideration of the foregoing, the Court determines that the Report and Recommendation should be adopted. Accordingly, it is hereby **ORDERED** that: (1) the Report and Recommendation is **ADOPTED** in full (Doc. No. 5); (2) Plaintiff's petition is **DISMISSED WITHOUT PREJUDICE**; (3) **DENIES** Plaintiff a certificate of appealability; (4) **CERTIFIES** that any appeal would be objectively frivolous and finds that Plaintiff should be denied *in forma pauperis* status on appeal; and (5) **TERMINATES** this case on the Court's docket.

IT IS SO ORDERED.

Date: August 17, 2022

s/ Michael J. Newman
Hon. Michael J. Newman
United States District Judge